

Appl. No. 10/691,777
Response dated November 24, 2008
Reply to Office Action of 05/23/2008

REMARKS/ARGUMENTS

Applicant respectfully requests reconsideration of this application in view of the following remarks.

Claim Rejection under 35 U.S.C. § 103(a)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Response to Rejection of Claims 1-76 under 35 U.S.C. § 103(a) – Eilbacher in view of Garrido and in further view of Jotkowitz

The Office has rejected claims 1-76 under 35 U.S.C. 103(a) as being unpatentable over Eilbacher et al. (Eilbacher) [sic], (US 6,959,078) 25 October 2005, in view of Garrido (Southeast Asia; Call it a boom: Philippine call centers; Internet printout; 4 pages; 04/22/2003) and further in view of Jotkowitz (2003/0187725 A1).

Applicant respectfully points out that according to the MPEP §2143, to establish a *prima facie* case of obviousness, three basic criteria must be met

- 1st there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings;

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- 2nd there must be a reasonable expectation of success;
- 3rd the prior art reference (or references when combined) must teach or suggest all of the claim limitations."

These criteria have not been met by the Office's rejection of Applicant's claims 1-76.

The Office has failed to carry its burden to present a *prima facie* case of obviousness. The new reference cited by the Office, Jotkowitz, does not teach Applicant's claim limitations for which it was cited. Jotkowitz teaches **averaging** different respondent's answers with respect to questions about a participant. Such **averaging** in Jotkowitz is not the same as **calibrating** in the instant application. Jotkowitz is silent on the subject of calibrating. Applicant teaches **calibrating** the response of multiple respondents to a common input, see for example:

..... a calibration loop 302-304-306 provides uniformity in scoring an agent's performance by submitting the same agent's data to the entire team of analysts multiple times and reviewing the scored results between the analysts until the variation between analysts' scores of the same agent's data is within acceptable limits (internal calibration).

Applicant's Specification, ¶ [0045].

Jotkowitz does not teach, as Applicant does, how to obtain a uniform response from a group of people to a common input, instead Jotkowitz simply averages the differences between different respondents' answers. Applicant respectfully requests the current objection to be lifted and the allowance of all pending claims in light of the following discussion.

The Office states on pp 2-4:

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“Claims 1-72. Eilbacker et al. teaches a method, system and computer-readable medium having instruction embedded therein for causing a computer to implement said method for analyzing a call agent performance, comprising:

receiving a storable representation of a service call between an agent of a business and customers wherein the business is located in a first geographic area (C. 5, L. 10-17);

analyzing the storable representation, in a second geographic area (a quality management system 30 is located remotely from the customers and agents) to determine the service quality provided to a customer by the agent (C. 5, L. 10-17; C. 8, L. 7-37);

generating report data associated with the analyzing (C. 5, L. 15).

While Eilbacker et al. teaches that said quality management system 30 can be located anywhere in the world, Eilbacker et al. does not teach that said second geographic area is subject to a wage attenuator; and that wage attenuation is utilized to reduce a cost of analyzing the service call in the second geographic area relative to the cost of analyzing the call in the first geographic area.

Garrido discloses a practice of outsourcing various jobs in the countries, having lower wages. Specifically, India and Philippine were discussed as the countries where local citizens are paid much less than workers doing same job in the USA (See first and third pages).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Eilbacker et al. to include that said second geographic area is subject to a wage attenuator; and that wage attenuation is utilized to reduce a cost of analyzing the service call in the second geographic area relative to the cost of analyzing the call in the first geographic area, as disclosed in Garrido, because it would advantageously allow to save funds and decrease the turnover rate for call centers, as specifically stated in Garrido.

Jotkowitz teaches a method and system for monitoring professional development, wherein the performance of workers (call agents) is monitored and a

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report including calibrated (ranked) results is provided (Figs. 3-7), wherein calibrating the results indicates necessary skill and training in doing so.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Eilbacher et al. and Garrido to include that said data in said report represents a calibrated determination of quality of service rendered by the agent to the customers, as disclosed in Jotkowitz, because it would advantageously allow to provide managers as well as agents a constant input as to performance, as specifically stated in Jotkowitz [0004].

Furthermore, Eilbacher et al. discloses notifying the agent of the results of the analysis, including displaying warning and congratulatory messages (C. 4, L. 37-44)."

Office Action, May 23, 2008, pages 2-4.

Eilbacher states at Column 5, lines 10-17:

"The present invention is also directed to a method for displaying contact center information, including recording data associated with one or more communications with a contact center, wherein the *recording* is *based on* one or more *recording rules*; comparing the recorded data against predetermined contact center parameters; displaying messages to contact center personnel, reporting contact center activity as compared against the parameters; and storing said displayed messages."

Eilbacher, Column 5, lines 10-17 (emphasis added).

Eilbacher states at Column 8, lines 7-37:

"Contact center monitors, supervisors, clients, and third party reviewers (hereinafter collectively referred to as "users") alike can access the communication information via the Internet for recreation of the entire communication/transaction. Contact center clients therefore have the ability to directly evaluate communications made by their customers and to distribute these communications within their respective organization for further evaluation and review. As a result of the present invention, access to contact center transactional data is no longer limited by the

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number of monitor workstations 112' connected to the system because, with the present invention, any number of Internet-accessible users with proper authorization and a multimedia playback browser can query the data anytime, from anywhere.

A key feature of the present invention is the ease of remote access to the data by users. The user is no longer restricted to the proprietary equipment and software of a telephone call center to conveniently and economically access the full wealth of information that is recorded and subsequently made available for review and analysis by the present open storage portal operating with the communication contact center. The user has the option of selecting particular transactions to review, such as all calls for a particular client, for a particular product, to a particular agent, during a particular time frame, etc. In this manner, the users have web-based browser access to the full range of contact center data from anywhere in the world and are not constrained by a requirement for proprietary hardware and software in network proximity to the contact center.

Eilbacher, Column 8, lines 11-37.

Jotkowitz states at paragraph [0004]:

In many instances, however, the information tends to become static or unused, or at least not optimally used, because of the difficulty in making it available to sources that would require such information. One obvious such source which would benefit from a continuing and dynamic assessment of performance would be the employee herself, who could receive constant input as to performance, so that adjustments and changes in emphasis can be made in response to feedback. Others include, but are not limited to, managers, directors, vice presidents.

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Jotkowitz Does Not Teach Calibration

Jotkowitz has been cited by the Office to "modify Eilbacher et al. and Garrido to include that said data in said report represents a *calibrated determination of quality of service rendered by the agent* to the customers, as disclosed by Jotkowitz *emphasis added*." Office Action, p 4. Respectfully, Jotkowitz does not suggest, mention, or teach anything related to "calibration." Jotkowitz is concerned with averaging, where multiple respondents provide data on a participant and that data are averaged together, see for example paragraph [0093]:

Reverting to FIG. 3 of the drawings, one of the headings with respect to each competency is that of participant's "Average Charts". By clicking on the icon in the "average chart" column, the participant would have access to important information relating to averages, and the participant's standings therein. With reference to FIG. 7, total averages are shown, once more with respect to the credibility competency. The participant's total average is shown by category, including overall (which is the average already provided in the "Overall Average" heading in FIG. 3 of the drawings), but also for overall average by category, such as self, seniors in organization, peers, employees who report to him, and clients. The participant would note that senior employees score him relatively high, representing an increase from prior feedback (4.65, an increase of 0.42), while those that report to him scored the participant's credibility at a much lower level, which is decreasing (a 3.23 score, down 0.96 from the previous round of feedback). This will alert the participant to a definite difference in the perception of his or her credibility between those senior to him, and those that report to him.

Jotkowitz, ¶ [0093].

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In the passage from Jotkowitz cited above, note that a participant's results are presented in "Average Charts." Total averages or "Overall Averages" are comprised of categories of respondents and each category of respondent has its own average. For example, senior employees scored the participant 4.65, while employees who report to the participant scored the participant at 3.23. Note further that the respondents' responses will necessarily contain respondent variability or error due to the absence of calibration between respondents.

Unlike Jotkowitz, which introduces permanent error into its results, Applicant teaches **calibration** of the responses from a plurality of analysts to a common input, i.e., an "internal calibration." Applicant's process teaches how to obtain individual responses from different people that vary within a predetermined tolerance. Additionally, Applicant teaches how to calibrate the responses from a plurality of analysts to an agent's specific team supervisor and/or manager, resulting in a "client calibration." An example of Applicant's teaching on calibration is found, for example in paragraph [0045] from Applicant's Specification:

.....With reference to **Figure 3A**, analysts review and evaluate transactions between agents and customers at 300. Initially, a calibration loop 302-304-306 provides uniformity in scoring an agent's performance by submitting the same agent's data to the entire team of analysts multiple times and reviewing the scored results between the analysts until the variation between analysts' scores of the same agent's data is within acceptable limits (*internal calibration*) *emphasis added*. The same calibration process follows between the team of analysts and the agent's specific team supervisor and/or manager. The agent, the agent's team supervisor or the agent's manager can be referred to as the client, in such a case, calibrating the analysts to one or more of these entities associated with the particular business can be referred to as a "client calibration."

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Acceptable calibration limits will be determined by the requirements of particular businesses; however, in one embodiment, a deviation of five percent (5%) between individual analyst's agent-scores (*internal calibration*) is one example of an acceptable level of uniformity and a deviation of five percent (5%) during a client calibration is one example of an acceptable level of uniformity *emphasis added*.

Applicant's Specification, ¶ [0045].

In the Office's response to Applicant's arguments filed on 01/22/2008, the Office seems to proffer equivalence between "calibrated" and "ranked" within the following statement from page 5 of the office action:

Specifically, Jotkowitz teaches monitoring professional development, wherein the performance of workers (call agents) is monitored and a report including calibrated (ranked) results is provided (Figs. 3-7).

Office Action, p 5.

"Ranked" is not equivalent to "calibrated," neither is "averaged" equivalent to "calibrated." Note that the word "calibrate" is not found in Jotkowitz precisely because Jotkowitz does not teach calibration. The combination of Eilbacher in view of Garrido and further in view of Jotkowitz does not provide all of the elements found in Applicant's claims. Thus, this combination does not make out the required *prima facie* case of obviousness which is required to be made out by the Office.

Eilbacher Does Not Teach or Suggest Applicant's Claim Limitations

The office notes on page 5 of the Office Action that Eilbacher does not "preclude recording at required intervals." What is important in the analysis of obviousness is what

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the references teach. Care must be taken not to add, via hindsight reasoning, what the references do not teach. In this case, Eilbacher does not teach or suggest, among other things, Applicant's high frequency statistically relevant recording interval, analysis of the customer/agent interaction, accelerated training, etc.

There is not even a hint within Eilbacher to even suggest a need for Applicant's high frequency statistically relevant recording interval. See for example Applicant's paragraph [0029]:

....Typically, the agent's interactions with customers will be analyzed at approximately a rate of one interaction per agent per day, indicated by X or a statistically relevant sample size based on the requirements of a business. In some embodiments, the analysis rate can be greater and will be indicated by a number preceding the X. For example, analyzing 4 interactions per agent per day would be indicated by 4X.

Applicant's Specification, ¶ [0029].

The Office is using impermissible hindsight reasoning to find Applicant's claim limitations within Eilbacher. Applicant submits that Eilbacher does not teach Applicant's claim limitations. Neither does Eilbacher in view of Garrido in further view of Jotkowitz teach Applicant's claim limitations. Eilbacher only records certain contact center data, "wherein the recording is based on one or more recording rules; comparing the recorded data against predetermined contact center parameters; displaying messages to contact center personnel, reporting contact center activity as compared against the parameters; and storing said displayed messages." Eilbacher, Column 5, Lines 13-14.

Eilbacher states that an object of the Eilbacher invention is "to automate the process by which the electronic data associated with the operation of a contact center is selectively

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recorded and analyzed." Eilbacher, Column 4, Lines 27-29. Eilbacher characterizes its invention as follows: "[t]he dynamic recording system of the present invention provides a broadly available doorway to a full range of electronic data recorded during the operation of a contact center **40**, such as a telephone contact center. As used herein, the term, 'contact center' refers to a telephone call center that provides information and **analysis** of the operation and utilization of the center facilities." Eilbacher, Column 7, Lines 24-30. Eilbacher teaches that the primary functions of its analyzer 400 are limited to: [t]he data analyzer 400 has two primary functions; a reporting process and recording rules management." Eilbacher, Column 9, Lines 27-29. Eilbacher goes on to teach that "the data analyzer 400 gleans agent performance information from the data and compares the performance of each agent against a predetermined set of standards or goals for agents as maintained in the contact center's standards database 460." Eilbacher, Column 9, Lines 30-33. Eilbacher teaches that "performance information" consists of:

1. transactions completed by the agent's shift or month-to-date;
2. the elapsed number of minutes/hours online with the current customer, and
3. the number of calls waiting in queue for that agent or that agent's group.

Eilbacher, Column 9, Lines 55-63.

Eilbacher's teaches that "[t]he data analyzer 400 analyzes the environmental data 450 as isolated data, as compared to historical environmental data retained by the system in the history database 462, and as compared to contact center standards as maintained in the standards database 460. The results from the analysis can be output by the report

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generator 464 in the form of reports.....the reports can list the temperature and humidity at various agents' workstations 104 across time." Eilbacher, Column 10, Lines 2-11.

It is important to note that while Eilbacher uses the words "analysis" and "report," these words are used differently by Eilbacher and Applicant. Eilbacher does not teach as Applicant teaches that:

[0036] "...the analysts review and evaluate agent/customer interactions to ensure that the agents have met quality of service criteria established for a particular business." In one embodiment, the evaluation process includes the areas of core skills, soft skills, selling skills, and specific know how. The analysts check core skills by analyzing the agent's method and competence in; answering the phone and greeting the customer; getting the order in the system; answering basic questions; and comprehension of a request made via email. Some reporting metrics used for report generation include the average call handle time and spelling and grammar used accurately during the interaction with the customer. Soft skills are checked by analyzing whether the agent's greetings are scripted; determining how "canned" the email responses are; determining whether the agent can handle an irate customer under pressure; and analyzing the agent's knowledge of when to engage the agent's supervisor to resolve the call. Some reporting metrics used for report generation for soft skills include whether the customer's issue was resolved with the first call, this includes metrics related to specific know how (i.e., technical support/knowledge), and how many repeat emails were required to resolve the customer's issue. Analyzing selling skills involves ranking the agent's ability to; recommend additional products (cross-sell); sell more of the product under discussion by successfully understanding the tone and intonation of the customer during the interaction; and comprehension of the products and services. Some reporting metrics used in report generation for selling skills include measurements of the agent's up-sell and cross-sell

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performance. In some embodiments, reporting can include scoring compliance with regulations such as the Telephone Consumer Protection Act (TCPA) or other regulations.

[0037] For example, if the customer interaction consisted of an inbound sales call where a customer called to place an order for a product, such as a camera, some of the criteria the analyst will be looking for are whether the agent has opened the call properly, acted courteously, attempted to up-sell (i.e., sell a higher end camera), cross-sell and add-on-sell (i.e., selling film and a camera accessory bag with the original camera order) the customer, and checking to determine if the agent was knowledgeable enough to meet the demands of the sale in order to accomplish the up-sell or cross-sell (e.g., could the agent explain the features and benefits and answer technical questions related to the product). Other criteria are employed as are appropriate for a particular industry. For example, in one embodiment, analysts will grade the interactions according to established quality monitoring criteria for a particular industry sector or a particular business. In one embodiment, an agent's performance is sampled at least once a day by the analysts generating report data and agent feedback. Report data is stored in data base 114 for later use and a portion thereof is tailored for the business and the business's agents at 108. Feedback is provided to the business and the agents at 260.

Applicants Specification, ¶ [0036-0037].

Applicant's Specification states that "**Figure 2B** and **Figure 2C** "display an embodiment of a score sheet that can be used by an analyst to evaluate and score a transaction between an agent and a customer." Applicants Specification, ¶ [0039].

Applicant's **Figure 2B** and **Figure 2C** are presented below. Eilbacher's analyzer 400 is incapable of determining quality of service as Applicant does in Applicant's claims 1

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through 76. Eilbacher's reports do not contain Applicant's "calibrated measurement of quality of service rendered by the agent to the customers." Applicant's Claim 1.

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THE BUSINESS PERFORMANCE AND CUSTOMER CARE QUALITY
 MEASUREMENT
 Inventor: Yord M. Lee 205-447-6
 Docket No.: 052403.P001
 Express Mail No.: ER 318145750 US
 Filing Date: October 22, 2003
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FIG. 2B

260a

262

SCORING PARAMETERS

Moving forward all the UK RMA's will be shipped from the fulfillment center in France Moving forward all the

Customer Service Competencies

Call Opening

- Used Proper Greeting. Score: 266
- Asked for Transaction ID. Score: 268
- Verified the Customer's Information. Score: 270

Comments: _____

Customer Service Skills (Accent and Voice)

- Used good grammar, avoids slang or jargon. Score: _____
- Rate of Speech mirrored that of customer. Score: _____
- Hold courtesies were followed. Score: _____
- Sounded confident, friendly, and polite. Score: _____
- Set customer's expectations, used empathy if necessary, escalated to a supervisor if necessary. Score: _____

Comments: _____

Call Closing

- Offered additional products. Score: _____
- Used proper closing script. Score: _____

Comments: _____

Knowledge, Accuracy and Resolution

- Demonstrate knowledge of the product process. Score: _____
- Credit card authorization process followed. Score: _____
- Offered alternate products; add on sales. Score: _____
- Accurate and concise information was given to the customer. Score: _____

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TIME, BUSINESS PERFORMANCE AND CUSTOMER CARE QUALITY
 MEASUREMENT
 Inven: Howard M. Lee 206 1336
 Docket No.: 062403.P001
 Express Mail No.: ER 318145750 US
 Filing Date: October 22, 2003
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FIG. 2C

Call Management 284

- Controlled call pace efficiently and length of call was appropriate to request. Score: _____
- Controlled call tone and length. Score: _____

Comments: _____

Sales 260b

- Identified sales opportunities. Score: _____
- Suggested alternate compatible products in exchange for return. Score: _____

Comments: _____

Comments Summary: 286

Even better tips: 288

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Applicant's Specification Figure 2B and Figure 2C.

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Eilbacher teaches applying "rules" to the collection of contact center data using data analyzer 400. "As regards the recording rules management portion of the function of the data analyzer 400, the data analyzer 400 can automatically and dynamically (in real time) implement a new set of recording rules for capturing both the communications data 451 and the environmental data 450." Eilbacher, Column 10, Lines 44-48. Thus, Eilbacher teaches away from Applicant's invention by allowing the data analyzer to "automatically and dynamically) change the recording rules. Such automatic ability as taught by Eilbacher does not make Applicant's invention; to the contrary it prohibits the enablement of it. Applicant teaches in its Specification and claims in claims 4, 5, 28, 50, 52, 55, 20, 29, 43, and 65 techniques that require at least one of the agent's service calls per day to be recorded so that it can be analyzed for quality of service on this frequency. Automatically resetting recording rules by Eilbacher's data analyzer 400 would prevent such periodic recording from occurring. Neither does Garrido cure this defect. Finally, the combination of Eilbacher in view of Garrido in further view of Jotkowitz fails to disclose or make obvious what Applicant has claimed.

Applicant's Previously Presented (New) Claims 73-76 and New claim 77.

Eilbacher, Garrido, and Jotkowitz either singly or in combination do not teach "training the analyst." Neither do these references teach calibration of a group of analysts as discussed above. Neither do these references teach using higher frequency sampling or multiple types of calibrations to accelerate training of the analysts (New claim 77). Neither

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do these references teach that the higher frequency is approximately six times a day or at a rate that is statistically relevant for a particular business. Thus, the cited references do not disclose Applicant's claim limitations.

The cited art of record, either singly or in combination, does not teach all of Applicant's claim elements. Therefore, the Office has failed to make out the required prima facie case of obviousness required to sustain a 35 U.S.C. 103(a) rejection and the rejection should be withdrawn.

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CONCLUSION

Claims 1, 2, 3, 4, 17, 24, 28, 41, 48, 53, 59, 60, 61, 62, 63 and 68 have been amended.

Claim 77 is new.

Applicant respectfully submits that all claims are in condition for allowance and requests such.

Communication via cleartext email is authorized.

Respectfully submitted,

PELOQUIN, PLLC

November 24, 2008
Date

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USPTO Registration # 50,787

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted herewith via facsimile transmission to Telephone No. (571) 273-8300 on the date indicated below and is addressed to: Mail Stop AMENDMENT, Commissioner for Patents, Box 1450, Alexandria, Virginia 22313-1450.

Date of Deposit: November 24, 2008

Mark S. Peloquin, Esq.
(Typed or printed name of person transmitting paper or fee)

Mark S. Peloquin, Esq. November 24, 2008
(Signature of person transmitting paper or fee) Date